Azmi bin Alang Ahmad (suing on his behalf and in his representative capacity for and on behalf for the benefit of the entire class of people who have deposited money with MGSB Bhd as attached in Appendix A) v Siti Waki'ah bt Mohd Nor (sued in his/her official capacity as an Investigating Officer for Jabatan Perisikan Kewangan dan Penguatkuasaan (FIED) Bank Negara Malaysia) & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-21NCvC-109–10 OF 2022
GAN TECHIONG JC
26 APRIL 2024

Civil Procedure — Striking out — Application to strike out action — Whether plaintiff had cause of action against first defendant — Whether the first defendant entitled for legal immunity under Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 — Whether the first defendant acted in good faith — Anti-Money Laundering and Anti-Terrorism Financing Act 2001 s 77 — Central Bank of Malaysia Act 2009 s 87

This was an application by the first defendant to strike out proceedings. The first defendant, an Investigation Officer in the Financial Intelligence and Enforcement Department of the second defendant, ie Bank Negara Malaysia was sued in her official capacity. The plaintiff had filed a civil suit for himself and as a Class Action on behalf of 71 other persons ('the plaintiff and his comrades') against the defendants in order to recover the monies that they had deposited with a company by the name of MGSB Bhd, where essentially, the plaintiff and his comrades were victims of scam. The defendants conducted a raid led by the second defendant on the premises of MGSB Bhd following some reports and a preliminary investigation. The company bank accounts were frozen under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('the AMLA'). The said raid was led by the second defendant and assisted by officers from the fifth defendant, Polis DiRaja Malaysia, the National Revenue Recovery Enforcement Team under the Attorney-General's Chambers and the Companies Commission. The plaintiff and his comrades were aggrieved by the decision of the defendants to release part of the seized funds. They pled: (a) defendants jointly and/or separately had deliberately abused the power vested in them and/or committed torts of misfeasance as public servants; and (b) breached their statutory duty and were negligent. Subsequently, the first defendant, filed for striking out of proceedings on the grounds: (i) the first defendant had legal immunity

pursuant to s 87 of the Central Bank of Malaysia Act 2009; (ii) the first defendant was protected under s 77 of the AMLA; (iii) the plaintiff's action did not reveal any cause of action as the first defendant was only carrying duties based on instructions from the second defendant; (iv) the plaintiff's action against the first defendant was humiliating, frivolous and vexatious; and (v) the plaintiff's action was an abuse of court process because the plaintiff failed to obtain any compensation from a separate civil suit which was filed against MGSB Bhd and its directors.

Held, allowing the application:

(1) For the purpose of sustaining the claim against the first defendant, the plaintiff must be able to justify naming the first defendant as a defendant in this civil suit and it was only necessary to determine if they had pleaded facts and adduced evidence in the plaintiff's affidavit-in-reply that would have entitled them to name the first defendant in this civil suit. The court agreed with the submission of learned counsel for the first defendant that there was no causal link between the alleged loss of the plaintiff and his comrades with the first defendant. The first defendant was only carrying out her duty in investigating MGSB Bhd's activities by following instructions from the second defendant and/or the public prosecutor (see paras 13–15).

(2) Immunity conferred by s 77 of the AMLA, to officers of the competent authority or the relevant enforcement agency that were involved in enforcing AMLA, was wider than that under s 87 of the Central Bank of Malaysia Act 2009. It was the intention of Parliament in legislating s 77 of the AMLA to provide immunity to officers of the competent authority or the relevant enforcement agency who performed their duties in good faith in enforcing the provisions of AMLA, civil suits naming officers either personally or in his/her official capacity, ought to be struck out in limine unless a lack of good faith was demonstrated (see paras 20–21).

[Bahasa Malaysia summary

Ini adalah suatu permohonan oleh defendan pertama untuk membatalkan prosiding. Defendan pertama, seorang Pegawai Penyiasat di Jabatan Perisikan Kewangan dan Penguatkuasaan defendan kedua, iaitu Bank Negara Malaysia, telah disaman dalam kapasiti rasminya. Plaintif telah memfailkan suatu saman sivil untuk dirinya sendiri dan sebagai suatu Tindakan Kumpulan bagi pihak 71 orang lain ('plaintif dan rakan-rakannya') terhadap defendan dengan tujuan untuk mendapatkan semula wang yang telah mereka depositkan dengan sebuah syarikat bernama MGSB Bhd, di mana pada hakikatnya plaintif dan rakan-rakannya adalah mangsa penipuan. Defendan telah menjalankan satu serbuan yang diketuai oleh defendan kedua ke atas premis MGSB Bhd berikutan beberapa laporan dan siasatan awal. Akaun bank syarikat telah dibekukan di bawah Akta Pencegahan Pengubahan Wang Haram, Pencegahan

Pembiayaan Keganasan dan Hasil Daripada Aktiviti Haram 2001 ('APPWH'). Serbuan tersebut diketuai oleh defendan kedua dan dibantu oleh pegawai daripada defendan kelima, Polis DiRaja Malaysia, Pasukan Penguatkuasaan Pemulihan Hasil Negara di bawah Jabatan Peguam Negara serta Suruhanjaya Syarikat. Plaintif dan rakan-rakannya berasa terkilan dengan keputusan defendan dalam melepaskan sebahagian daripada dana yang telah disita. Mereka telah memplidkan bahawa: (a) defendan secara bersama dan/atau berasingan telah dengan sengaja menyalahgunakan kuasa yang diamanahkan kepada mereka dan/atau telah melakukan tort salah laku sebagai penjawat awam; dan (b) melanggar kewajipan statutori mereka dan telah cuai. Berikutan itu, defendan pertama telah memfailkan permohonan untuk membatalkan prosiding atas alasan: (i) defendan pertama mempunyai kekebalan undang-undang menurut s 87 Akta Bank Negara Malaysia 2009; (ii) defendan pertama dilindungi di bawah s 77 APPWH; (iii) tindakan plaintif tidak menunjukkan sebarang kausa tindakan kerana defendan pertama hanyalah melaksanakan tugas berdasarkan arahan defendan kedua; (iv) tindakan plaintif terhadap defendan pertama adalah menghina, remeh dan menyusahkan; dan (v) tindakan plaintif merupakan suatu penyalahgunaan proses mahkamah kerana plaintif gagal mendapatkan sebarang pampasan daripada suatu saman sivil yang berasingan yang telah difailkan terhadap MGSB Bhd dan pengarah-pengarahnya.

Diputuskan, membenarkan permohonan:

(1) Bagi tujuan mengekalkan tuntutan terhadap defendan pertama, plaintif mestilah dapat membuktikan justifikasi menamakan defendan pertama sebagai defendan dalam saman sivil ini dan ia hanya perlu untuk menentukan sama ada mereka telah menyatakan fakta serta mengemukakan keterangan dalam afidavit-jawapan plaintif yang membolehkan mereka menamakan defendan pertama dalam saman sivil ini. Mahkamah bersetuju dengan hujahan peguamcara defendan pertama bahawa tiada kaitan kausal antara kerugian yang didakwa plaintif dan rakan-rakannya dengan defendan pertama. Defendan pertama hanyalah melaksanakan tugasnya dalam menyiasat aktiviti MGSB Bhd dengan mengikut arahan daripada defendan kedua dan/atau Pendakwa Raya (lihat perenggan 13–15).

(2) Kekebalan yang diperuntukkan oleh s 77 APPWH kepada pegawai pihak berkuasa berkeupayaan atau agensi penguatkuasaan berkaitan yang terlibat dalam penguatkuasaan APPWH adalah lebih luas daripada kekebalan di bawah s 87 Akta Bank Negara Malaysia 2009. Memandangkan ia adalah niat Parlimen dalam menggubal s 77 APPWH untuk memberikan kekebalan kepada pegawai pihak berkuasa berkeupayaan atau agensi penguatkuasaan berkaitan yang melaksanakan tugas mereka dengan niat baik dalam menguatkuasakan peruntukan APPWH, maka saman sivil yang menamakan pegawai sama ada secara

peribadi atau dalam kapasiti rasmi, wajar diketepikan in limine kecuali dapat dibuktikan ketiadaan niat baik (lihat perenggan 20–21).]

Legislation referred to

Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 s 77
Central Bank of Malaysia Act 2009 s 87
Rules of Court 2012 O 18 r 19

Fatima Zulaikha bt Ahmad Bashri (Faizal Rahman & Co) for the plaintiff.
Kevin Sathiaseelan (with Leng Wie Mun and Sovitra Sukahut) (Kevin & Co) for the first and second defendants.
Siti Syakimah bt Ibrahim (Attorney General's Chambers) for the third, fourth, fifth, sixth and seventh defendants.

Gan Techiong JC:

INTRODUCTION

[1] There were three striking-out applications filed in this civil suit, one of which was the one filed by the first defendant. The first defendant works for the second defendant Bank Negara Malaysia and had had filed her striking-out application (encl 38) separately from the second defendant's application (encl 40). The third, fourth, fifth, sixth and seventh defendants filed a joint application to strike out the plaintiff's to strike out his claim. The subject matter of my grounds here is just the first defendant's application (encl 38).

[2] The first defendant, one Siti Waki'ah bt Mohd Nor, is an Investigation Officer in the Financial Intelligence and Enforcement Department of the second defendant, ie Bank Negara Malaysia. She was sued in her official capacity. I decided to allow the first defendant's application (encl 38) because it was plain and obvious that the plaintiffs' claim against her was frivolous, vexatious, and an abuse of process of court.

BACKGROUND FACTS

[3] The plaintiff has filed this civil suit for himself and also as a Class Action on behalf of persons named in a list marked as 'Lampiran A', who are allegedly persons who had deposited money with MGSB Bhd. 'Lampiran A' contained 72 names, with the plaintiff's name listed first. The plaintiff and those 71 other persons shall hereinafter be referred to as 'the plaintiff and his comrades'.

[4] In essence, the plaintiff and his comrades are suing the defendants in this civil suit to try to recover the monies that they had respectively deposited with a company by the name of MGSB Bhd. From the narrative in the lengthy

statement of claim, the plaintiff and his comrades are victims of a scam.

THE PLAINTIFF'S CLAIM AGAINST THE DEFENDANTS

[5] The plaintiff has amended his lengthy statement of claim twice. His re-amended statement of claim contains 85 paragraphs. The narrative is about a person by the name of Hisyamuddin, presumably the mastermind, being a director of the said MGSB Bhd together with Nur Ain Aliana bt Mat Azmi, Ahmad Zalimi bin Mohd Ali and Halimatun Saadiah bt Che Omar.

[6] It was further pleaded by the plaintiff that the said Hisyamuddin and other directors of the said MGSB Bhd had allegedly used misrepresentation about three projects to induce the plaintiff and his comrades to invest in MGSB Bhd. Those three investment projects were pleaded to have been for the import and export of coconuts, a development project in Pulau Sirandah, Indonesia and a Go Public Initial Public Offering in Indonesia. The plaintiff and his comrades pleaded that there were four bank accounts operated by MGSB and they had jointly deposited a total of RM4,249,000 into those accounts.

[7] The first event of concern to the plaintiff and his comrades occurred on 15th September 2017 when a raid was conducted on the premises of the said MGSB Bhd following some reports and preliminary investigation. The said raid was led by the second defendant Bank Negara Malaysia and assisted by officers from the fifth defendant Polis DiRaja Malaysia, the National Revenue Recovery Enforcement Team ('NRRET') under the Attorney General's Chambers and the Companies Commission.

[8] Following the said raid, those four directors of MGSB Bhd were arrested and remanded for being involved in taking money deposits illegally. The plaintiff further pleaded that 54 bank accounts of MGSB Bhd and cash in Ringgit Malaysia and foreign currencies were seized under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001.

[9] The plaintiff and his comrades pleaded that they were aggrieved by the decision of the defendants in releasing part of the seized funds. Their pleadings could be summarised as follows:

(a) that the defendants jointly and/or separately have deliberately abused the power vested in them and/or committed torts of misfeasance as public servants; and

(b) the defendants, jointly and/or separately, knew and were fully aware, at all material times, that as civil servants and enforcement officers involved

in the joint raid operation, they have a responsibility to safeguard and protect the money and/or confiscated assets belonging to MGSB Limited.

[10] The prayers of the plaintiff, inter alia, are for:

(a) a declaration that the defendants jointly and/or severally committed the tort of misfeasance;

(b) a declaration that the defendants jointly and/or severally breached their statutory duty and were negligent;

(c) an order for the defendants jointly and/or severally to provide written clarifications and explanations with all related documents regarding the position and actual amount of money seized and/or money in the account belonging to MGSB and/or any money during the joint raid conducted by the defendants against MGSB, within 21 days from the date the judgment is given;

(d) an order for the defendants to release and/or return part of the seized money and/or money in the account belonging to MGSB amounting to RM5,110,800 and/or any other amount determined by the Court to the plaintiff and people in the class action, through solicitors Messrs. Faizal Rahman & Co;

(e) in the alternative, an order for the defendants to release and/or return part of the seized money and/or money in the account belonging to MGSB amounting to RM 4,249,000 which is the capital paid by the plaintiff and people in the class action and/or any amount other determined by the Court to the plaintiff and people in the class action, through the solicitors Messrs. Faizal Rahman & Co;

(f) in the alternative, an order for the defendants to release and/or return part of the seized money and/or money in the account belonging to MGSB amounting to RM851,000 which is the profit promised to the plaintiff and/or any other amount determined by the court to the plaintiff and the people in the class action through the solicitors Messrs Faizal Rahman & Co;

(g) general damages;

(h) aggravated damages;

(i) exemplary damages and/or punitive damages; and

(j) interest at 5%pa on damages to be awarded from

THE FIRST DEFENDANT'S STRIKING OUT APPLICATION

[11] The grounds stated in support of the first defendant's application were as follows:

(a) the first defendant has legal immunity pursuant to s 87 of the Central Bank of Malaysia Act 2009, where no action, suit, prosecution or other proceeding shall lie or be brought, instituted, or maintained in any court or before any other authority against any officer or employee of the second defendant (Bank Negara Malaysia);

(b) the first defendant is also protected under s 77 of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 for the same reason, that is, the first defendant has carried out her duties according to the orders that were received by her;

(c) the plaintiff's action against the first defendant does not reveal any reasonable cause of action because the first defendant is only an officer of the second defendant who carries out her duties according to the instructions of the second defendant and also based on the procedure and provisions of the law;

(d) the plaintiff's action against the first defendant is humiliating, frivolous and vexatious because the plaintiff should not apply for private legal remedies regarding the first defendant's decision, which was implemented based on statutory powers; and

(e) the plaintiff's action is an abuse of court process because the plaintiff has failed to obtain any compensation from Civil Suit No WA-22NCVC-562–09 of 2018 which he filed against MGSB Bhd and its directors.

[12] As for the plaintiff's allegations about the amount of money frozen, the first defendant disclosed as follows:

(a) the sum was found in the accounts of MGSB Bhd and related entities that were frozen was RM701,054 and there was never any sum of RM56,468,498.29 as claimed by the plaintiff. The amount of RM56,468,498.29 stated in the charge sheet against MGSB Bhd as based on investigation records and not the amount found or seized. After further investigation, it was found that only RM8,943.61 in two bank accounts out of the RM701,054 belonging to MGSB were the 'barang kes', ie to be tendered as the exhibits for the AMLA and predicate case charges;

(b) from the date when the bank accounts of MGSB Bhd and its related entities were frozen on 15th September 2017 till 2second August 2019, which was the date when MGSB Bhd and its directors pleaded guilty in

A the Kajang Sessions Court, the relevant 'barang kes' continued to be frozen, ie not released; and

(c) the release of the money in MGSB Bhd's bank accounts were based on the provisions of the law and following the instructions of the Attorney General's Chambers after investigation has been carried out. It was not in conflict with any investigation or action of the fifth defendant as alleged by the plaintiff.

ANALYSIS OF THE LAW AND FACTS

[13] Various allegations were pleaded against the defendants but for the purpose of sustaining his claim against the first defendant, the plaintiff must be able to justify naming the first defendant SITI WAKI'AH BT MOHD NOR as a defendant in this civil suit.

[14] For the purpose of determining whether the plaintiff and his comrades have a sustainable claim against the first defendant, it is not necessary to delve into the details of their allegations. It is only necessary to determine if they have pleaded facts and adduce evidence in the plaintiff's affidavit-in-reply that would entitle them to name the first defendant SITI WAKI'AH BT MOHD NOR as a defendant in this civil suit — since they have named Bank Negara Malaysia as the second defendant.

[15] I agree with the submission of learned counsel for the first defendant that there is no causal link between the alleged loss of the plaintiff and his comrades with the first defendant. She did not receive any money from the plaintiff and his comrades. They had willingly paid money to MGSB Bhd and the said Hisyamuddin. The first defendant was only carrying out her duty in investigating MGSB Bhd's activities by following instructions from the second defendant and/or the public prosecutor.

[16] There is no doubt that the first defendant, as an officer and employee of Bank Negara, is covered by the legal immunity conferred upon all officers and employees of Bank Negara Malaysia by s 87 of the Central Bank of Malaysia Act 2009, which reads as follows:

> *No action, suit*, prosecution or other proceeding *shall lie or be brought*, instituted, or maintained *in any court* or before any other authority *against*
>
> (a) *any officer or employee of the Bank*;
>
> (b) any person lawfully acting on behalf of the Bank, or on behalf of any such officer or employee, in his capacity as a person acting on such behalf; or
>
> (c) any person appointed pursuant to this Act,
>
> *for or on account of*, or in respect of, *any act done* or statement made or *omitted to be*

done or made, or purporting to be done or made, in pursuance or in execution of, or intended pursuance or execution of, this Act, any order in writing, direction, instruction, notice or other thing issued under this Act:

Provided that *such act or such statement was done or made, or was omitted to be done or made, in good faith*.

[17] Since the seizure/freezing of cash and bank accounts was made under the Anti-Money Laundering and Anti-Terrorism Financing Act 2001, the first defendant was, as a matter of undisputed fact, just one of the officers of the competent authority or the relevant enforcement agency that were involved in the multi-agency raid on MGSB Bhd.

[18] As it was an enforcement action under AMLA, it means that s 77 of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 ('the AMLA') is another provision of the law that the first defendant is entitled to rely on as an immunity umbrella. It reads:

No action, suit, prosecution or other proceedings *shall lie or be brought*, instituted, or maintained *in any court* or before any other authority *against* —

(a) the competent authority or the relevant enforcement agency;

(b) *any director or officer of the competent authority or the relevant enforcement agency, either personally or in his official capacity*; or

(c) ...

for or on account of, or in respect of, any act done or statement made or omitted to be done or made, or purporting to be done or made or *omitted to be done or made, in pursuance of or in execution of, or intended pursuance of or execution of, this Act* or any order in writing, direction, instruction or other thing issued under this Act *if such act or statement was done* or made, or *was omitted to be done* or made, *in good faith.*

[19] Though both s 87 of the Central Bank of Malaysia Act 2009 and s 77 of the AMLA contain a proviso that the first defendant must have acted or omitted to act, in good faith for immunity to be applicable, there was no evidence about the first defendant's conduct as an investigating officer involved in the raid and investigation of MGSB Bhd, as having lacked good faith. She appeared to have been named as a co-defendant simply because she was the investigating officer. General averments of misfeasance are insufficient to justify naming an investigating officer as a co-defendant with her department.

[20] I find that the immunity conferred by s 77 of the AMLA, to officers of the competent authority or the relevant enforcement agency that were involved in enforcing AMLA, is wider than that under s 87 of the Central Bank of Malaysia Act 2009, in that the said s 77 expressly prohibits the suing of any officer of the competent authority or the relevant enforcement agency, e*ither*

personally or in his official capacity, in pursuance of or in execution of, or *intended execution* of the provisions of AMLA.

CONCLUSION

[21] Since it was the intention of Parliament in legislating s 77 of the AMLA to provide immunity to officers of the competent authority or the relevant enforcement agency who perform their duties in good faith in enforcing the provisions of AMLA, I am of the view that civil suits naming such an officer either personally or in his/her official capacity, ought to be struck out *in limine* unless the plaintiff is able to demonstrate any lack of good faith on the part of that officer. In cases where the pleadings and affidavit evidence show that the officer had been frivolously named as a co-defendant -such as in this case — the court ought to give effect to the provisions of s 77 of AMLA by exercising its discretionary powers under O 18 r 19 of the Rules of Court 2012 instead of allowing the officer to be dragged through a lengthy trial.

[22] By reason of the facts and law highlighted above, I decided to allow the first defendant's striking-out application (encl 38) to strike out the claim against her.

Application allowed.

Reported by Nur Liyana Natasha